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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Javier M., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B215822
(Super. Ct. No. 2008032180)
(Ventura County)

THE PEOPLE,

Petitioner and Respondent
v.

JAVIER M.,

Minor and Appellant.

Javier M. appeals from the juvenile court's order sustaining a Welfare and Institutions Code section 602 petition that he possessed a deadly weapon (a billy (baseball bat)).¹ (Pen. Code, § 12020, subd. (a).)² The juvenile court declared the crime a misdemeanor, and placed appellant on probation. Appellant challenges the sufficiency

¹ The initial petition alleged that the weapon was a knife. The prosecution presented evidence during the adjudication to support its theory that appellant possessed an aluminum baseball bat. It moved to amend the petition to allege that the weapon was a Billy. Although the court did not expressly rule on that motion, it sustained the petition based on its finding that appellant possessed a bat or billy that he intended to use to teach the . . . victim a lesson.

² All statutory references are to the Penal Code unless otherwise stated.

of the evidence to support the finding that the bat is a deadly weapon. He further argues that there is not sufficient evidence to support the finding that he possessed the bat. He also requests that we take judicial notice of Juan Marichal's assault upon Johnny Roseboro with a baseball bat. We affirm the judgment and deny the request for judicial notice.

BACKGROUND

In July 2008, appellant lived with his father. On July 7, between 11:00 p.m. and midnight, they went to a house at Muirwood Court in Simi Valley to confront appellant's mother (his father's ex-wife). Appellant's father believed that his ex-wife was cheating on him. She was sitting in a car with another man when they arrived. The other man ran away. Appellant's mother ran into the house.

Appellant's father drove with appellant to their Adam Road residence and retrieved a baseball bat.³ They returned to the Muirwood Court address. Appellant stayed in the truck. His father used a knife to slash the tires on a rental car that his mother was using. His father also broke a window in the house with a wooden bat.

Just before midnight on July 7, 2008, Simi Valley Police Officer Christopher Haheesy went to Muirwood Court regarding a broken window call. He spoke with appellant's mother. She had a black and swollen eye.

Haheesy noticed a passing truck as he spoke with appellant's mother. He stopped the truck. Appellant's father was driving and appellant was in the front passenger seat. Appellant told Haheesy that he had dropped a knife onto the truck's floorboard. He said he intended to use the knife like brass knuckles to assault the man who was with his mother that night.

Haheesy found a knife, a three-foot steel chain and an aluminum baseball bat under the truck's front passenger seat. He also found a wooden bat with a small amount

³ During oral argument, counsel argued that appellant's father did not admit that he went to his home to retrieve a baseball bat. Although he initially denied having gone there for that purpose, he later responded, Yes to the following question: And it was when--you went back, retrieved the baseball bat, went back to the Muirwood residence, and at that time you broke the window?

of blood on it in the truck, behind the driver's seat. Appellant's father had blood on his hands and clothing.

Appellant and his father both testified that appellant remained in the truck during the incident. His father admitted that he broke a window with the wooden bat at the Muirwood residence. He cut himself, and bled, while doing that. His father said that the bats were in the truck because his children used them to play softball and baseball. Before the adjudication, appellant's father pleaded guilty to two charges based on his conduct that night.

Appellant admitted having stated that he intended to use the knife as a fist pack (like brass knuckles). He fabricated that statement in an attempt to prevent the police from holding his father responsible. As the police stopped the truck, appellant took the knife from the center console where his father had placed it, and threw it under the seat so that it was not out in the open.

DISCUSSION

Appellant argues that there is not sufficient evidence to support the finding that the bat is a deadly weapon within the meaning of section 12020. We disagree.

In a juvenile case, we apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) In such claims, ' . . . we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--that is, evidence that is reasonable, credible, and of solid value--from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]' [Citation.] (*People v. Wilson* (2008) 44 Cal.4th 758, 806.) '[W]e presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence.' [Citation.] (*Ibid.*) The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) ' . . . 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a

contrary finding does not warrant a reversal of the judgment.' [Citations.]" (*Id.* at pp. 792-793.)

Subdivision (a)(1) of section 12020 expressly prohibits the possession of any instrument or weapon of the kind commonly known as a . . . billy Our Supreme Court has recognized that an item commonly used for a nonviolent purpose, such as a baseball bat or a table leg, [can] qualify as a billy, but only 'when the attendant circumstances, including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless, purpose.' [Citation.] (*People v. King* (2006) 38 Cal.4th 617, 624.) We are bound to follow the Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

In another decision, our Supreme Court concluded that an altered bat constituted a billy, based on its alteration and other attendant circumstances indicating that the defendant would use it for a dangerous purpose. (*People v. Grubb* (1966) 63 Cal.2d 614, 620-621, superseded by statute on other grounds as stated in *People v. Rubacalva* (2000) 23 Cal.4th 322, 329-331.) The court reasoned that the Legislature, in enacting section 12020, had intended to prohibit the possession of ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger. Accordingly, the statute would encompass the possession of a table leg, in one sense an obviously useful item, when it is detached from the table and carried at night in a 'tough' neighborhood to the scene of a riot. On the other hand the section would not penalize the Little Leaguer at bat in a baseball game. (*Grubb*, at p. 621.)⁴

⁴ As appellant notes, on December 17, 2008, our Supreme Court granted review in *In re David V.* (S167716), a case in which the juvenile court sustained a section 602 petition allegation that a minor with a bicycle footrest possessed metal knuckles in violation of section 12020, subdivision (c)(7). Among the issues before the court in *David V.* is whether sufficient evidence supports the juvenile court's finding that the minor possessed metal knuckles within the meaning of Penal Code section 12020, subdivision (c)(7).

Here, appellant minimizes the attendant circumstances indicating that he possessed the bat as a weapon. His father admitted that he drove from Muirwood Court to his home, where he retrieved a bat, returned to Muirwood Court, and broke a window. Appellant accompanied his father on that trip. If the bat had been in the truck all along, the trip would have been futile. The court was free to reject the testimony of appellant's father that the bats were in the truck only because his children played softball and baseball. In addition, appellant told Haheesy that he intended to use the knife to assault the man who was with his mother. Haheesy found that knife and the aluminum bat under the passenger seat where appellant sat throughout the evening. That evidence is sufficient to support the finding that he possessed a billy in violation of section 12020, subdivision (a), notwithstanding the fact that the bat could have been used for an innocent purpose. (See *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1404 [carrying a two-foot metal chain with a heavy padlock in a pocket for self-defense constitutes possession of a slungshot in violation of section 12020, subdivision (a)].)

Appellant also challenges the sufficiency of the evidence to support the finding that he actually or constructively possessed the bat. This challenge also fails.

A defendant has actual possession when the weapon is in his immediate possession or control. He has constructive possession when the weapon, while not in his actual possession, is nonetheless under his dominion and control, either directly or through others. (*People v. Pena* (1999) 74 Cal.App.4th 1078, 1083-1084.) Possession may be imputed when the [item] is found in a location which is . . . subject to the joint dominion and control of the accused and another. (*People v. Francis* (1969) 71 Cal.2d 66, 71.)

In this case, appellant and his father went to the Muirwood Court house when they thought his mother was cheating on his father. Appellant accompanied his father when he drove home to get a bat and returned to Muirwood Court. He sat in the truck while his father used the bat to break a window. When questioned by Haheesy about weapons, appellant told him that he had dropped a knife on the truck's floorboard. Appellant told Haheesy that he had intended to use the knife like brass knuckles to assault

the man who was with his mother that night. He testified that he had placed the knife under the passenger seat as the police stopped the truck. When Haesy searched the truck, he found a knife, an aluminum bat and a chain under the front passenger seat. There is sufficient circumstantial evidence that the aluminum bat was within appellant's dominion and control, and thus, in his possession.

DISPOSITION

The judgment is affirmed.

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COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Manuel Covarrubias, Judge
Superior Court County of Ventura

Richard Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

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